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SUBJ: FOREIGN ASSISTANCE ACT 1973, TERMINATION OF OVERSEAS

POLICE TRAINING AND RELATED PROGRAMS OF U.S. ASSISTANCE

JOINT STATE/AID/DEFENSE MESSAGE

1. THE FAA OF 1973, EFFECTIVE DECEMBER 17, 1973, (P.L. 93-188),  
CONTAINS FOLLOWING PROVISION:

"SEC. 11. PROHIBITING POLICE TRAINING

(A) NO PART OF ANY APPROPRIATION MADE AVAILABLE TO CARRY OUT THIS  
ACT SHALL BE USED TO CONDUCT ANY POLICE TRAINING OR RELATED PROGRAM  
IN A FOREIGN COUNTRY.

(B) SUBSECTION (A) OF THIS SECTION SHALL NOT APPLY--

(1) WITH RESPECT TO ASSISTANCE RENDERED UNDER SECTION 515(C)  
OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, AS  
AMENDED, OR WITH RESPECT TO ANY AUTHORITY OF THE DRUG ENFORCEMENT  
ADMINISTRATION OR THE FEDERAL BUREAU OF INVESTIGATION WHICH RELATES  
TO CRIMES OF THE NATURE WHICH ARE UNLAWFUL UNDER THE LAWS OF THE  
UNITED STATES; OR

(2) TO ANY CONTRACT ENTERED INTO PRIOR TO THE DATE OF ENACTMENT  
OF THIS SECTION WITH ANY PERSON, ORGANIZATION, OR UNITED STATES  
GOVERNMENT AGENCY TO PROVIDE PERSONNEL TO CONDUCT, OR ASSIST IN

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CONDUCTING, ANY SUCH PROGRAM.

NOTWITHSTANDING PARAGRAPH (2), SUBSECTION (A) SHALL APPLY TO ANY RENEWAL OR EXTENSION OF ANY CONTRACT REFERRED TO IN SUCH PARAGRAPH ENTERED INTO ON OR AFTER SUCH DATE OF ENACTMENT."

2. LEGISLATIVE HISTORY OF SECTION 112 WILL BE SUBJECT TO SEPARATE AIRGRAM.

3. FOLLOWING PARAGRAPHS 4-9 SUPPLY INFORMATION AND GUIDANCE CONCERNING A.I.D. PUBLIC SAFETY ACTIVITIES.

4. SECTION 112 DOES NOT PROHIBIT:

A. THE TRAINING OF FOREIGN POLICE OFFICIALS IN U.S. INCLUDING OPERATION OF INTERNATIONAL POLICE ACADEMY.

B. OVERSEAS NARCOTICS ENFORCEMENT AUTHORIZED UNDER SECTION 401 OF THE ACT.

C. OVERSEAS PUBLIC SAFETY ACTIVITIES FULLY FUNDED BY FOREIGN GOVERNMENTS ON AN ADVANCE OF FUNDS OR REIMBURSEMENT BASIS AS AUTHORIZED UNDER FAA OF 1961, SECTION 607. HOWEVER, THESE ACTIVITIES REQUIRE POLICY AND CONGRESSIONAL RELATIONS ISSUES WHICH WOULD REQUIRE CAREFUL CONSIDERATION BY AID/W ON A CASE-BY-CASE BASIS.

5. IN REFERENCE TO PARAGRAPH 4(A) ABOVE, USAID SHOULD PROGRAM FY70 AND FUTURE YEAR FUNDING FOR POLICE PARTICIPANT TRAINING IN U.S., PARTICULARLY AS IT MIGHT ADDITIONALLY ADDRESS THE UNACHIEVED GOALS AND OBJECTIVES OF THE TERMINATED PUBLIC SAFETY PROGRAM. ADDITIONAL PARTICIPANT TRAINING GUIDANCE WILL BE PROVIDED FROM TIME TO TIME INCLUDING COURSE ANNOUNCEMENTS.

6. ALTHOUGH THE NEW PROHIBITION ON FAA FUNDING OF PUBLIC SAFETY PROGRAMS ABROAD BECAME EFFECTIVE DECEMBER 17, 1973, SUCH PROGRAMS MAY BE PHASED OUT IN A PRUDENT MANNER UNDER AUTHORITY OF FAA, SECTION 617. THE WINDING UP PERIOD HAS BEEN REDUCED FROM TWELVE (12) TO EIGHT (8) MONTHS BY FAA OF 1973.

7. SECTION 617 AUTHORITY IS STRICTLY CONFINED TO WINDING UP ACTIVITIES. HENCE IT DOES NOT AUTHORIZE FUNDING OF NEW PROGRAMS.

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BUT ONLY COMPLETION OF EXISTING ONES - AND THEN ONLY WHERE U.S. INTERESTS ARE SERVED THEREBY. DURING THE EIGHT-MONTH PHASE-OUT PERIOD NEW FUNDS MAY BE OBLIGATED AND FUNDS OBLIGATED DURING THE EIGHT-MONTH PERIOD MAY BE DISBURSED BOTH DURING AND AFTER THE EIGHT-MONTH PERIOD. HOWEVER, OVERSEAS ACTIVITY MUST CEASE WITHIN THE EIGHT-MONTH PERIOD. THE ONLY NEW OBLIGATIONS PERMITTED DURING THAT TIME ARE ONES NECESSARY TO FINISH UP PROGRAMS WHICH ARE NEAR COMPLETION AND WHICH IT IS IN THE INTERESTS OF THE U.S. TO COMPLETE.

8. ALTHOUGH THE PROHIBITION ON FAA FUNDING APPLIES TO REVISION OR EXTENSIONS OF EXISTING CONTRACTS, SUCH FUNDING IS PERMITTED BY SECTION 617 WHERE THE CONDITIONS OF SECTION 617 ARE MET, I.E., WHERE FUNDING FOR AN ADDITIONAL PERIOD OF NOT TO EXCEED EIGHT MONTHS FROM THE EFFECTIVE DATE OF FAA OF 1973 WILL ACCOMPLISH COMPLETION OF PROGRAMS.

9. FOR EACH ADDRESSEE WITH A.I.D. FUNDED PUBLIC SAFETY PROGRAM A SEPARATE MESSAGE FOLLOWS REGARDING AID/W PROPOSALS FOR THE UNDERLY PHASE-OUT AND TERMINATION OF PROGRAM.

10. THE FOLLOWING PARAGRAPHS 11-18 PROVIDE INFORMATION AND GUIDANCE WITH RESPECT TO PROGRAMS FUNDED BY MAP OR SUPPORTING ASSISTANCE.

11. MAP AND SUPPORTING ASSISTANCE FUNDS ARE SUBJECT TO THIS SEC. 112 PROHIBITION AS WELL AS OTHER FUNDS AVAILABLE TO CARRY OUT 1961 FOREIGN ASSISTANCE ACT (FAA). CASH SALES, CREDITS, OR GUARANTIES MADE OR ISSUED UNDER FOREIGN MILITARY SALES ACT AND REIMBURSEMENT ASSISTANCE UNDER SECTION 607, FAA, REMAIN UNAFFECTED BY THE PHASE-OUT, AS WELL AS MASF PROGRAMS (POLICY RE CONTINUATION OF FAA SEC. 607, FMS AND MASF PROGRAMS WILL HAVE TO BE REVIEWED IN LIGHT OF THIS NEW LEGISLATION).

12. ALSO RE MASF, A PROVISION OF H.R. 11771 (FOREIGN ASSISTANCE APPROPRIATION ACT FOR FY 1974) READS

"NONE OF THE FUNDS APPROPRIATED OR MADE AVAILABLE PURSUANT TO THIS ACT, AND NO LOCAL CURRENCIES GENERATED AS A RESULT OF ASSISTANCE FURNISHED UNDER THIS ACT, MAY BE USED FOR THE SUPPORT OF POLICE, OR PRISON CONSTRUCTION AND ADMINISTRATION WITHIN SOUTH VIETNAM, OR FOR TRAINING, INCLUDING COMPUTER TRAINING, OF SOUTH VIETNAMESE."

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RESPECT TO POLICE, CRIMINAL, OR PRISON MATTERS, OR FOR COMPUTERS OR COMPUTER PARTS FOR USE FOR SOUTH VIETNAM WITH RESPECT TO POLICE, CRIMINAL, OR PRISON MATTERS." INTENTION OF THIS PROVISION, AS EXPLAINED IN SENATE COMMITTEE REPORT (S. REPT NO. 93-629, PP. 27-30) WAS TO REMOVE AID FROM PARTICIPATION IN DOD MARS PROGRAMS FOR VIETNAM OF PUBLIC SAFETY CHARACTER. ADDITIONAL GUIDANCE FOR SAIGON WILL BE PROVIDED BY SEPTEL.

13. POLICE TRAINING AND RELATED PROGRAMS IN THE UNITED STATES ARE NOT PROHIBITED BY SECTION 112.

14. "POLICE," AS USED IN SECTION 112, INCLUDES MILITARY POLICE AS WELL AS CIVILIAN POLICE. NEITHER THE NAME GIVEN THE UNIT BY THE FOREIGN GOVERNMENT NOR THE MINISTERIAL AUTHORITY UNDER WHICH IT OPERATES IS SUFFICIENT, IN AND BY ITSELF, TO DETERMINE WHETHER A PARTICULAR FORCE IS A "POLICE UNIT." DETERMINING FACTOR IS NATURE OF FUNCTION PERFORMED.

EA? 15. ALL ASSISTANCE PROGRAMS RELATED TO POLICE, INCLUDING FURNISHING OF EQUIPMENT, AND NOT JUST THOSE CONSISTING OF OR RELATED TO TRAINING AS DEFINED IN SECTION 644(F), FAA, WHICH ARE CONDUCTED IN FOREIGN COUNTRIES WITH FAA FUNDS ARE PROHIBITED, SUBJECT TO SECTION 112(B)(2), REGARDING PERFORMANCE OF EXISTING CONTRACTS.

16. ASSISTANCE IN FOREIGN COUNTRIES UNDER FAA FOR ALL PHASES OF "LAW ENFORCEMENT" OTHER THAN FOR NARCOTICS CONTROL IS PROHIBITED. "LAW ENFORCEMENT" INCLUDES APPREHENSION AND CONTROL OF POLITICAL OFFENDERS AND OPPONENTS OF GOVERNMENT IN POWER (OTHER THAN PRISONERS OF WAR) AS WELL AS PERSONS SUSPECTED OF COMMISSION OF SO-CALLED COMMON CRIMES. SECTION 112, FAA, DOES NOT PROHIBIT ASSISTANCE TO UNITS WHOSE SOLE FUNCTION IS THAT ASPECT OF INTERNAL SECURITY WHICH MAY INVOLVE COMBAT OPERATIONS AGAINST INSURGENTS OR LEGITIMATE SELF-DEFENSE OF NATIONAL TERRITORY AGAINST FOREIGN INVASION, WHETHER OR NOT SUCH UNITS ARE CALLED "POLICE." ASSISTANCE IS, HOWEVER, PROHIBITED TO UNITS WHICH HAVE A LAW ENFORCEMENT FUNCTION AS WELL AS A COMBAT FUNCTION. CONSEQUENTLY, ENACTMENT OF SUBJECT PROVISION MAY UNDER THIS CRITERION REQUIRE TERMINATION OF MAP SUPPORT TO PARTICULAR UNITS OF FOREIGN POLICE IN SOME COUNTRIES.

17. ALTHOUGH SECTION 617, AS AMENDED BY FOREIGN ASSISTANCE ACT OF

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1973, WILL PERMIT UP TO 8MONTHS FOR ORDERLY WINDUP OF A TERMINATED PROGRAM, IT WILL BE NECESSARY TO REFRAIN FROM INITIATION OF ANY NEW ACTIVITIES AND TO BEGIN PLANNING FOR PROMPT WINDING UP OF EXISTING ACTIVITIES SUBJECT TO NEW PROHIBITION.

18. UNIFIED COMMANDS HAVE BEEN REQUESTED BY DOD TO FURNISH FOLLOWING INFORMATION FOR EACH FY 74 MAP RECIPIENT COUNTRY/ACTIVITY: (A) AN INDICATION OF WHETHER THE PROGRAM CONTAINS ANY "POLICE TRAINING OR RELATED PROGRAMS" AS DEFINED ABOVE, (B) A BRIEF DESCRIPTION OF THE TYPE, VALUE, AND PURPOSE OF "POLICE TRAINING OR RELATED PROGRAMS" INCLUDED IN FY 74 MAP, AND (C) A COMPLETE LISTING OF ALL RCN'S INVOLVED.  
DECONTROL: ONE YEAR FROM DATE, RUSH

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